

SOCIAL WORKER CHECKLIST

INDIAN CHILD WELFARE ACT

American Indian children have a unique legal status that derives from treaties entered into between the United States government and various tribes. Because this legal status flows through the tribes to the individual members, this is legally a political status, not a racial category.

A. INTAKE:

- ____ 1. Initial inquiry about Indian status:
 - ____ a. Both parents have been identified. If a parent is absent, attempts at locating the parent have begun.
 - ____ b. Both parents and child asked if child is American Indian or has American Indian ancestors.
 - ____ c. All available information is reviewed for any indication of Indian Heritage.
 - ____ d. Both parents have been asked if they are American Indian or have American Indian ancestors.

If there is any indication that child has American Indian heritage continue with this checklist.

- ____ 2. Parents and child are given information about:
 - ____ a. Indian Child Welfare Act (ICWA).
 - ____ b. Tribal ICWA contact person.
 - ____ c. American Indian advocates available in the community.
 - ____ d. Services and resources available.
 - ____ e. Court appointed attorney process and referral information (if available).
- ____ 3. Notification of Services to Indian child sent to tribe within 7 days of case opening.

It is the responsibility of the assigned social worker and supervisor to ensure that these initial items have been completed.

B. IDENTIFICATION OF INDIAN CHILD

Only tribes have the right to determine who is, and who is not, a tribal member, just as the U.S. government has the sole right to determine who is a U.S. Citizen.

- ____ 1. Child is a member of the tribe:

- _____ a. Documentation of membership has been received from tribe.
- _____ 2. Child is not a tribal member, but is eligible for membership.
 - _____ a. Documentation of eligibility has been received from the tribe.
 - _____ b. Check here if child may be eligible for membership in more than one tribe.
- _____ 3. Eligibility for tribal membership is not established:
 - _____ a. Family Tree Chart is completed on both sides of child's family.
 - _____ b. All possible tribes and Bureau of Indian Affairs (BIA) have been notified.
 - _____ c. Membership applications have been obtained, filled out, and returned to tribe.
 - _____ d. All steps taken to establish Indian ancestry and eligibility for tribal membership are documented in the case file.

Once you have information that a child has American Indian heritage, the child should be considered an Indian child until it is established with reasonable certainty that there is no possibility of eligibility for tribal membership.

C. INVESTIGATION AND ASSESSMENT:

The prevailing standards in the American Indian community must guide all investigations and assessments. There must be a causal relationship between the conditions that exist and danger to the child. Poverty, inadequate housing, alcohol abuse or non-conforming social behavior alone are not sufficient reasons to remove a child.

- _____ 1. Tribal representation is involved at earliest possible point in investigation.
 - _____ Tribe is/has been given access to all information available to social services.
- _____ 2. Assessments of parents and child are done only by experts with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

D. ACTIVE EFFORTS BY AGENCY TO PREVENT FAMILY BREAKUP:

*Indian orientated programs and services should be provided. The prevailing standard of the tribe should guide all services and decisions on a case. The agency must make active efforts to provide services to the family after the investigation and **PRIOR TO** a decision to remove the child. Active efforts means not just an identification of the problems or solutions, but actual concrete efforts showing an active attempt to resolve the conditions.*

- _____ 1. Tribal representative is invited to participate at the earliest possible point in case planning and their advice is actively solicited.

- _____ a. Tribe has been/is given full access to social service records.
- _____ 2. Advice is sought from American Indian advocates involved with the case.
- _____ 3. An expert with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community is located to:
 - _____ a. Evaluate the family's circumstances.
 - _____ b. Develop case plan with parent/custodian that uses tribal and American Indian community resources.
- _____ 4. Concrete services such as financial assistance, food, housing, etc. are provided if needed.
- _____ 5. If the child is not with a parent, visitation agreements (including transportation assistance) keep the child in close contact with parents, siblings, and other relatives.
- _____ 6. Parents and children are referred to American Indian agencies for services.
- _____ 7. Extended family members are contacted as resource for child.
- _____ 8. If there is difficulty working with the family, assistance is sought from agency with expertise in working with American Indian families.

E. EMERGENCY REMOVALS:

- _____ 1. The child is in imminent danger.
- _____ 2. Tribe has been notified by phone or FAX of emergency removal hearing.
- _____ 3. Inquiry has been made to determine if child is a ward of tribal court or resides or is domiciled on a reservation. If so, the case must be transferred to the tribe or the child returned to the parent.
- _____ 4. Affidavit or sworn testimony is presented at the removal hearing detailing the actions taken by the agency to facilitate return of the child to the parent, and identifying the specific emergent conditions that continue to threaten the child.
- _____ 5. Active efforts to prevent out-of-home placement were made, documented, detailed, and specified in the court order.

The agency must take "vigorous" action to assist the parents or Indian custodians so that the child can be safely and promptly returned to their care. The agency shall ensure that the emergency placement terminates immediately when such placement is no longer necessary to prevent imminent physical harm to the child.

F. VOLUNTARY PLACEMENTS:

- ____ 1. Parent is advised s/he can have child returned upon demand.
- ____ 2. Consent to placement is signed in front of judge who explains consequences to parents.
- ____ 3. Tribe is notified within 7 days.
- ____ 4. Tribe is notified of each administrative review and encouraged to participate.
- ____ 5. Parent is advised of right to court appointed attorney in preparation of case plan for voluntary placement.

G. TERMINATION OF PARENTAL RIGHTS CASES:

If a child is already a ward of a tribal court, or if the child resides or is domiciled on a reservation with a tribal court, the tribe has exclusive jurisdiction and all court proceedings (except the emergency removal hearing) must take place in tribal court. In all other cases the tribe has the right to intervene in the juvenile court proceedings, and either the tribe, Indian custodian or the parents can request that the case be transferred to tribal court.

- ____ 1. Parents, Guardian Ad Litem, Indian custodian and tribe receive written notice at least 10 days before any court hearings (ICWA Information and Notice of Rights).
- ____ 2. Court is informed of all tribes in which child may be eligible for membership.
- ____ 3. Active efforts to prevent out-of-home placement were made, documented, and specifically listed in detail in the court order.
- ____ 4. An expert who has substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community will testify that custody by the parent or custodian is likely to result in serious emotional or physical damage to the child.

H. OUT OF HOME PLACEMENTS:

In every placement, including shelter care placements, diligent efforts must be made to place child in a home of first preference. Only if that is not possible can a child be placed in a home in the next preference category. Standards of the American Indian community are to be applied in accepting or rejecting a particular placement.

- ____ 1. Tribe has been contacted to see if they have their own order of preference.
- ____ 2. Tribe is sent written notification prior to initial placement and prior to any change in placement (if emergency circumstances prevent prior notice, notice should be given immediately by phone or fax).
 - ____ a. Copies of notices are filed with court.

- ____ 3. Necessary removal language and findings are found in the court order.
- ____ 4. Child is placed with a member of his/her extended family.
 - ____ a. Relatives have been informed of right to apply for foster care payments.
- ____ 5. If child not with extended family, a diligent search is on-going.
 - ____ a. Child's mother has been asked for names of extended family.
 - ____ b. Child's father has been asked for names of extended family.
 - ____ c. Child has been asked for names of extended family members.
 - ____ d. Tribe has been asked to help with search for extended family.
 - ____ e. American Indian advocate on case has been asked to help with search for extended family.
 - ____ f. All possible extended family members have been contacted about possible placement and have been informed:
 - ____ i. That relatives are first preference for placement, and
 - ____ ii. Of what financial or other services may be available to the child and the family; contacts are made every 30 days.
 - ____ g. Special training is offered to extended family if necessary for placement.
- ____ 6. Until extended family is located child is placed in American Indian foster home or American Indian shelter.
- ____ 7. If child is not yet in an American Indian home, a diligent search for an American Indian home is on-going.
 - ____ a. Information about available homes is requested from tribe.
 - ____ b. All American Indian foster care licensing agencies have been contacted.
 - ____ c. Other private licensing agencies are contacted.
- ____ 8. Documentation of efforts to comply with the preferences is made, and provided to the Bureau of Indian Affairs or tribe upon request.

Placement preferences must be strictly followed. Placement of an Indian child into a non-Indian home is the last option or alternative after all other options have been exhausted. "Good cause" not to follow the placement preferences is a legal concept and cannot be used without prior approval. Parental preference alone is not sufficient to avoid the placement preferences. If you believe that good cause exists for not placing the child in a higher preference placement you should seek approval of the tribe.

I. ADOPTION:

- _____ 1. Notice of potential pre-adoptive or adoptive placement is sent to child's tribe within 7 days of placement.
- _____ 2. Parents are informed of services available through tribal social services and given all information provided to the tribe.
- _____ 3. For parent who wishes to consent to adoption, arrangements are made for parent to appear before a judge who can certify that the parent fully understands the terms and consequences of the consent.
 - _____ a. Child is at least 10 days old.
 - _____ b. If consent is withdrawn at any time prior to Termination of Parental Rights or adoption decree the child is returned to the parent.
- _____ 4. Tribe is contacted to see if they have their own order of preference for adoptive placement.
- _____ 5. Diligent efforts are made to place the child for adoption with extended family member.
 - _____ a. Child's mother has been asked for names of extended family.
 - _____ b. Child's father has been asked for names of extended family.
 - _____ c. Child has been asked for names of extended family.
 - _____ d. Tribe has been asked to help with search for extended family.
 - _____ e. American Indian advocate on case has been asked to help with search for extended family.
 - _____ f. All possible extended family members have been contacted about possible adoption and have been informed:
 - _____ i. That relatives are first preference for adoption and
 - _____ ii. Of what financial or other services may be available to the child and the adoptive family.
 - _____ g. Training to meet child's special needs is offered.
- _____ 6. If after diligent search no family member is available for adoption, child is placed for adoption with a member of child's tribe.
 - _____ a. Information about available homes is requested from tribe.

- _____ 7. If diligent search for extended family and other tribal members fails to locate adoptive family, child is placed for adoption with an Indian family or a different tribe.
 - _____ a. Information is sought from local and national programs with available Indian placement resources.
- _____ 8. Documentation of efforts to comply with the preferences is made, and provided to the Bureau of Indian Affairs or tribe upon their request.
- _____ 9. If the adoption is set aside, or adoptive parents voluntarily terminate parental rights, the birthparents are notified of their right to placement.
- _____ 10. Adult adoptees are informed of potential benefits of tribal membership and are assisted in obtaining information from the North Dakota Department of Human Services Adoption Program Administrator.